

Joseph D. Steward, III, Esq.
Kimmel & Silverman, P.C.
811 Wilshire Boulevard
Suite 1700-241
Los Angeles, California 90017
Telephone: 215-540-8888 x 134
Facsimile: 215-540-8817
jsteward@creditlaw.com
teamkimmel@creditlaw.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

WALDO ROMO DE VIVAR, JR.

) Case No.: 2:22-cv-6706

Plaintiff,

v.

**ELEVEN TALENTS, LLC D/B/A
HOMEBUYERS, INC.,**

-) COMPLAINT FOR DAMAGES
-) 1. VIOLATION OF THE
-) TELEPHONE CONSUMER
-) PROTECTION ACT, 47 U.S.C. §
-) 227, ET. SEQ.

Defendant.

COMPLAINT

Waldo Romo de Vivar Jr. (hereinafter referred to as "Plaintiff"), by and through his attorneys, Kimmel & Silverman, P.C., alleges the following against Eleven Talents, LLC d/b/a Homebuyers, Inc. (hereinafter referred to as "Defendant" or "Homebuyers"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

3. This Court has personal jurisdiction over Defendant because Plaintiff is a California resident in the central district and all the events giving rise to this litigation occurred in California.

4. Specifically, Defendant knowingly and deliberately placed phone calls to Plaintiff's "323" area code, which is associated with the State of California.

5. Furthermore, Defendant caused certain calls to be made from "213", "650" and "916" area codes which are associated with the State of California.

6. Plaintiff experienced disruption and injury in this District, as a result of Defendant's acts and omissions.

7. Accordingly, this Court has personal jurisdiction over Defendant, and venue is proper under 28 U.S.C. § 1391(b)(2).

PARTIES

8. Plaintiff is a natural person who resides in Montebello, California.

9. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).

10. Defendant is a business entity with its principal place of business, head office, or otherwise valid mailing address at 13575 Lyman Drive, Omaha, Nebraska 68138-4408.

11. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

12. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and/or insurers.

FACTUAL ALLEGATIONS

13. At all times relevant hereto, Plaintiff, Waldo Romo de Vivar Jr. owned a cell phone, the number for which was (323) XXX-1323.

14. Plaintiff registered that cell phone number on the Federal Do Not Call Registry on or around July 1, 2003.

15. Plaintiff registered that cell phone number on the Do Not Call list in order to obtain solitude from invasive and harassing telemarketing calls.

16. Defendant is a real estate listing company focused on buying and selling properties all over the United States.

17. Defendant engages in telemarketing in order to solicit business.

18. Beginning around June 2021 and continuing through at least August of 2022, Defendant placed a series of telemarketing calls to Plaintiff.

19. Plaintiff did not consent to those telemarketing calls and prior to Defendant's telemarketing campaign, Plaintiff did not express an interest in Defendant's real estate services.

20. Defendant's calls were not made for "emergency purposes."

21. In total, Defendant placed at least 21 calls to Plaintiff, at dates/times including the following:

Date/Time:	Caller ID:
June 28, 2021 at 4:18 PM	1-530-447-9159
June 28, 2021 at 5:04 PM	1-530-447-9159
June 28, 2021 at 5:15 PM	1-530-447-9159
June 28, 2021 at 5:16 PM	1-530-447-9159
June 29, 2021 at 4:09 PM	1-530-447-9159
July 1, 2021 at 9:39 AM	1-530-447-9159
July 1, 2021 at 10:17 AM	1-213-505-4080
July 7, 2021 at 11:44 AM	1-530-447-9159
July 7, 2021 at 11:56 AM	1-530-447-9159
July 21, 2021 at 2:39 PM	1-213-463-3665
September 9, 2021 at 5:09 PM	1-213-808-6664
September 11, 2021 at 2:46 PM	1-213-808-6664
October 12, 2021 at 10:19 AM	1-213-261-9568
October 13, 2021 at 4:54 PM	1-707-633-4089
November 17, 2021 at 2:46 PM	1-213-943-2425
November 24, 2021 at 12:59 PM	1-213-338-2841
March 1, 2022 at 12:48 PM	1-916-252-2391
March 24, 2022 at 10:10 AM	1-916-461-7839
May 13, 2022 at 1:00 PM	1-650-459-7503
August 2, 2022 at 8:02 AM	1-657-525-2516
August 8, 2022 at 4:57 PM	1-657-525-2579

22. Upon information and belief, Plaintiff received additional telemarketing calls from Defendant not included in the above list.

23. Plaintiff was able to identify who was calling by specifically asking the caller for which business they were calling. The caller party repeatedly confirmed the calls were on behalf of Homebuyers.

24. In the October 13, 2021 call, Defendant's representative identified herself as "Emma" and stated she was "calling on behalf of Homebuyers." Plaintiff instructed Emma that Defendant must stop all unwanted solicitation calls.

25. In that same call, Plaintiff instructed Emma to place Plaintiff's cell phone number on Defendant's internal Do Not Call list, which Emma said she would do. Nonetheless, Defendant's solicitation calls did not stop.

26. Plaintiff received at least eight more solicitation calls listed in the chart above after the October 13, 2021 call.

27. As a result of the foregoing, Plaintiff experienced frustration, annoyance, irritation and a sense that his privacy had been invaded by Defendant.

28. The foregoing acts and omissions were in violation of the TCPA.

COUNT I

DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(c)(5)

29. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

30. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c).

31. Defendant contacted Plaintiff despite the fact that Plaintiff has been registered on the Do Not Call Registry since July 1, 2003.

32. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

33. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

1 34. As a result of the above violations of the TCPA, Plaintiff has suffered
2 the losses and damages as set forth above entitling Plaintiff to an award of
3 statutory, actual and trebles damages.

4

5 **Wherefore**, Plaintiff, **Waldo Romo de Vivar Jr.** respectfully prays for
6 judgment as follows:

- 7
- 8 a. All actual damages Plaintiff suffered, as provided under 47
9 U.S.C. § 227(c)(5);
10
- 11 b. Statutory damages of \$500.00 per text/call, as provided under
12 47 U.S.C. § 227(c)(5)(B));
13
- 14 c. Additional treble damages of \$1,500.00 per text/call, as
15 provided under 47 U.S.C. § 227(c)(5)(C);
16
- 17 d. Injunctive relief, as provided under 47 U.S.C. § 227(c)(5); and
18
- 19 e. Any other relief this Honorable Court deems appropriate.

20

21

22

23

24

25

26

27

28

Respectfully submitted,

Dated: September 19, 2022

By: /s/ Joseph D. Steward
Joseph D. Steward, III, Esq.
Kimmel & Silverman, P.C.
811 Wilshire Boulevard
Suite 1700-241
Los Angeles, California 90017
Telephone: 215-540-8888 x 134
Facsimile: 215-540-8817
jsteward@creditlaw.com
teamkimmel@creditlaw.com
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28